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recovery under the Federal Employers' Liability Act. *Held*, that the deceased was engaged in interstate commerce. *North Carolina R. Co.* v. *Zachary*, 34 Sup. Ct. 305.

The plaintiff was assisting in the repair of a railway locomotive, which was regularly used in interstate commerce, but had been under repair for three weeks. Due to the negligence of a fellow servant, the plaintiff was injured, and sued the defendant company under the Federal Employers' Liability Act. *Held*, that the plaintiff was engaged in interstate commerce within the terms of the act. *Law* v. *Illinois Cent. R. Co.*, 208 Fed. 869 (C. C. A., 6th Cir.).

The Federal Act of 1908 abolishes the fellow-servant rule for employees of a railroad engaged in interstate commerce, while themselves engaged in such commerce. 35 STAT., 65, c. 149. Just when an employee is so engaged is a difficult question. Whether the work in question was part of the interstate commerce in which the carrier was engaged was suggested as a test by the majority of the court in *Pederson* v. *Delaware, L. & W. R. Co.*, 229 U. S. 146, 152. An employee has been held within the act when on the employer's premises but before actually beginning work. *Lamphere* v. *Oregon R. & N. Co.*, 196 Fed. 336. In the first of the principal cases, the employee had already begun work. An employee piloting an engine to a track where it will be attached to an interstate train is engaged in interstate commerce. *Norfolk & W. Ry. Co.* v. *Earnest*, 229 U. S. 114. That the deceased was likewise engaged seems clear. The opinion is also authority for the proposition that hauling empty cars from one state to another is interstate commerce. This is in harmony with *dicta* as to the Safety Appliance Act. See *Johnson* v. *Southern Pac. R. Co.*, 196 U. S. 1, 21; *Voelker* v. *Chicago, M. & St. P. Ry. Co.*, 116 Fed. 867, 874. Likewise a caretaker of a dead engine on an interstate journey was held to be within the protection of the Liability Act. *Atlantic, etc. R. Co.* v. *Jones*, 63 So. 693 (Ala. Ct. App.). Finally the Supreme Court answers in the affirmative the question as to whether an employee when injured must bring his action under the federal statute. See THORNTON, EMPLOYERS' LIABILITY AND SAFETY APPLIANCE ACTS, § 19. The second case also seems correct. Workmen engaged in repairs on roads and bridges have been held within the act. *Pederson* v. *Delaware, L. & W. Ry.*, *supra; Zikos* v. *Oregon R. & N. Co.*, 179 Fed. 893; *Central R. Co. of N. J.* v. *Colasurdo*, 192 Fed. 901. *Contra, Taylor* v. *Southern Ry. Co.*, 178 Fed. 380. Temporary repairs on a car engaged in interstate service are treated in the same way. *Darr* v. *Baltimore & O. R. Co.*, 197 Fed. 665. If the instrumentality has never been used in interstate commerce the act could be held not to apply. But once in, it seems hard to find a point where the engine or car, because of temporary withdrawal, loses its interstate character. The same result is reached in *Northern Pac. Ry. Co.* v. *Maerkle*, 198 Fed. 1. *Heimbach* v. *Lehigh Valley R. Co.*, 197 Fed. 579, *contra*, depends upon *Pederson* v. *Delaware, L. & W. R. Co.*, 197 Fed. 537, since overruled by the Supreme Court decision, *supra*. See 26 HARV. L. REV. 354.

LANDLORD AND TENANT — CONDITION OF PREMISES — LESSOR'S LIABILITY TO GUEST IN LEASED HOTEL. — The defendant was owner of a hotel and leased it for one year. At the time of the lease there was a concealed defect in the elevator of which the defendant should have known in the exercise of due care. The lessee, knowing of the defect, continued to operate the elevator in its defective condition. The plaintiff, a guest at the hotel, was injured as a result of this defect. *Held*, that the defendant is liable. *Colorado Mortgage & Investment Co.* v. *Giacomini*, 136 Pac. (Col.) 1039.

In the absence of an express agreement the lessor does not warrant the condition of the premises. *Bowe* v. *Hunking*, 135 Mass. 380; *Towne* v. *Thompson*, 68 N. H. 317, 44 Atl. 492. But the landlord is bound to warn the tenant against

known hidden defects, which the latter could not have discovered in the exercise of reasonable care. *Moore* v. *Parker*, 63 Kan. 52, 64 Pac. 975; *Howard* v. *Washington Water Power Co.*, 134 Pac. (Wash.) 927. The landlord owes no affirmative duty to detect and warn the tenant against hidden defects. *Whitmore* v. *Orono Pulp & Paper Co.*, 91 Me. 297, 39 Atl. 1032; *Shinkle, Wilson, & Kreis Co.* v. *Birney & Seymour*, 68 Oh. St. 328, 67 N. E. 715; *Hines* v. *Wilcox*, 96 Tenn. 148, 33 S. W. 914, 100 Tenn. 538, 46 S. W. 297, *contra*. The landlord ordinarily owes no greater duty to the tenant's employees, licensees, and business guests than to the tenant. The latter, having control of the premises, must be the one to warn them against hidden defects. *O'Brien* v. *Capwell*, 46 Barb. (N. Y.) 497; *Meade* v. *Montrose*, 160 S. W. (Mo.) 11; *Bailey* v. *Kelly*, 86 Kan. 911, 122 Pac. 1027, *contra*. Some cases seem to hold, that where the landlord leases premises for a specific use he is liable if they are not fit for that use. *Godley* v. *Hagerty*, 20 Pa. 387; *Carson* v. *Godley*, 26 Pa. 111. But so broad an exception to the general rule is not supported by the weight of authority. See *Jaffe* v. *Harteau*, 56 N. Y. 398, 401. Where, however, the owner leases premises for a public or quasi-public purpose, the public comes upon the premises in response to the implied invitation of the lessor and the latter owes a duty to the public to have the premises in suitable condition for that purpose at the time of the demise. *Fox* v. *Buffalo Park*, 47 N. Y. Supp. 788, 21 App. Div. 321; *Barrett* v. *Lake Ontario Beach Improvement Co.*, 174 N. Y. 310, 66 N. E. 968; *Joyce* v. *Martin*, 15 R. I. 558, 10 Atl. 620. See also, 44 AM. LAW REG. 273, 276.

LIMITATION OF ACTION — NEW PROMISE AND PART PAYMENT — EFFECT OF PAYMENTS BY SURETY OF CLAIM ASSIGNED AS SECURITY. — The defendant made a note to the plaintiff, and assigned him a claim against an insolvent bank as security. Later there was a payment to the plaintiff by the receiver of the bank. After the period of limitation has run upon the note, the plaintiff sues upon it. *Held*, that the payment does not toll the Statute of Limitations. *Security Bank* v. *Finkelstein*, 145 N. Y. Supp. 5 (Sup. Ct., App. Div.).

The defense of the Statute of Limitations can always be waived by the debtor, and a part payment is often a sufficient waiver. There must, however, be such an acknowledgment of the debt, by words or part payment, as fairly to imply a promise to pay the balance. *Linsell* v. *Bonsor*, 2 Bing. N. C. 241; *Chambers* v. *Garland*, 3 Greene (Ia.) 322. But the authority of the debtor must be found before any promise can be implied, and accordingly it is held that an acknowledgment of the debt by one of several joint debtors will not bind the others. *Bush* v. *Stowell*, 71 Pa. 208; *Boynton* v. *Spafford*, 162 Ill. 113, 44 N. E. 379. Nor will a payment by his assignee for creditors bind a debtor. *Marienthal* v. *Mosler*, 16 Oh. St. 566; *Pickett* v. *King*, 34 Barb. (N. Y.) 193. The argument of the considerable minority opposed to the principal case, is that the creditor has been made the debtor's agent to collect the collateral debt and apply it in payment, and that such a payment should bind the debtor, on the principles of agency. *Bosler* v. *McShane*, 78 Neb. 86, 113 N. W. 998; *Buffinton* v. *Chase*, 152 Mass. 534, 25 N. E. 977. It is hard to see, however, how the agency can be construed so broadly as to include a promise to pay the rest of the debt. Accordingly the principal case and the slight majority with it would appear to hold the better view. *Brown* v. *Latham*, 58 N. H. 30; *Wolford* v. *Cook*, 71 Minn. 77, 73 N. W. 706.

MALICIOUS ABUSE OF PROCESS — EFFECT OF BAD MOTIVE — TERMINATION OF PRIOR SUIT IN MALICIOUS PROSECUTION. — For the purpose of preventing a sale of the plaintiff's real estate, the defendant brought suit against the plaintiff to collect alleged commissions, and levied an attachment on the property. Before the termination of this action, the plaintiff sues for abuse